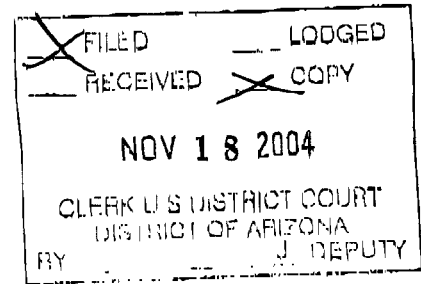


PAUL CHARLTON  
United States Attorney

MARTIN M. SHOEMAKER  
Ga. Bar # 001340  
Trial Attorney, Tax Division  
U.S. Department of Justice  
P.O. Box 7238  
Washington, D.C. 20044  
(202) 514-6491 phone  
(202) 514-6770 fax  
Attorneys for Plaintiff U.S.A.



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA  
PHOENIX DIVISION

UNITED STATES OF AMERICA, )

Plaintiff, )

v. )

TONY S. DUTSON and )  
MICAELA R. DUTSON, )

Defendants. )

**CV '04 2585 PHX EHC**  
Case No.

COMPLAINT FOR PERMANENT  
INJUNCTION AND FOR OTHER  
RELIEF

Plaintiff, the United States of America, states as follows.

**Jurisdiction and Venue**

1. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345, and §§ 7402(a) and 7408 of the Internal Revenue Code of 1986 (26 U.S.C.) ("Code").
2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

### **Nature of Action**

3. The United States is bringing this complaint to enjoin the defendants, Tony S. Dutson and Micaela R. Dutson, individually and doing business as or through any other entity, and any other person in active concert or participation with them, from directly or indirectly:

- (a) Organizing, promoting, marketing, or selling any tax shelter, plan or arrangement, including their abusive trust program, that advises or encourages customers to attempt to violate the internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities;
- (b) Making false or fraudulent statements about the allowability of any deduction or credit, the excludability of any income, or the securing of any tax benefit by the reason of participating in such tax shelters, plans or arrangements;
- © Encouraging, instructing, advising or assisting others to violate the tax laws, including to evade the payment of taxes;
- (d) Engaging in conduct subject to penalty under Code § 6700, *i.e.*, by making or furnishing, in connection with the organization or sale of an abusive shelter, plan, or arrangement, a statement the defendant knows or has reason to know to be false or fraudulent as to any material matter under the federal tax laws;
- (e) Engaging in conduct subject to penalty under Code § 6701, *i.e.*, preparing or assisting others in the preparation of any tax forms or other documents to be used in connection with any material matter arising under the internal revenue laws and which the defendant knows will (if so used) result in the understatement of tax liability; and
- (f) Engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws by the Internal Revenue Service.

4. This action has been requested by the Chief Counsel of the Internal Revenue

Service, a delegate of the Secretary of Treasury, and commenced at the direction of a delegate of the Attorney General of the United States, pursuant to Code §§ 7402 and 7408.

### **Defendants**

5. Tony S. Dutson resides at 1636 North Wilbur Lane, Mesa, Arizona 85201.
6. Micaela R. Dutson resides at 1636 North Wilbur Lane, Mesa, Arizona 85201.

### **Defendants' Activities**

7. The Dutsons organize, promote, and market a tax scam that uses a series of sham trust and business entities in a fraudulent attempt to evade income, estate, and employment tax, and to thwart the IRS's ability to collect their customers' federal taxes.

8. The Dutsons advise and assist customers to transfer their real and personal property into different trusts or corporations, each intended to perform a unique function within the scheme, with the ultimate goal of improperly shielding income from tax and assets from IRS collection efforts. The basic package sold by the Dutsons includes three or more entities (combinations of trusts and/or corporations).

9. For instance, the Dutsons create separate trusts to hold the participant's real and personal property. The trusts are used to hide the participant's ownership so that the participant can evade tax on subsequent sales of the property. The Dutsons form another trust or corporation to function as the participant's business or employer. In addition, the Dutsons form a corporation to "manage" the participant's enterprise. The Dutsons falsely

advise that payments among the various entities are deductible by the payor and nontaxable to the payee.

10. The Dutsons advise participants in their scheme to deem themselves employees of one of their new entities, and have that entity require them to use their personal residence for the benefit of that entity. Therefore, the Dutsons falsely tell their customers, maintenance and other personal expenses associated with the residence can constitute deductible business expenses.

11. The Dutsons also advise participants to arrange with their employers to have their compensation paid directly to one of their newly formed trusts or corporations. The Dutsons falsely inform the participants that the funds paid to the new entity are not taxable.

12. The Dutsons advise participants to draw minimal salaries from their entities, and to use this income to pay for personal items. This “salary” is often equal to the participant’s combined personal exemption and standard deduction amounts, so that nominal amounts of income, if any, are reported as subject to tax.

13. Generally, the participant either transfers his business to a trust or other entity, and discontinues filing tax returns, or transfers his business to a new entity disguising ownership, and then takes false deductions related to bogus payments made to other Dutson-created trusts or corporations. The newly formed entities take false deductions involving purported transfers among the entities, or do not file any tax returns at all.

14. One of the Dutsons serves as trustee of the trusts and registered agent of the corporations. The registered address of the entities is the Dutsons' address. This arrangement is intended to present the appearance of an independent trustee or manager of the newly created entity, and to give the appearance that the participant has given up control of his business or assets to an entity that he does not own.

15. In fact, however, the participants maintain exclusive control over all trust or corporation property and its income stream, and the participants' relationship to their income and assets is not altered by participation in the Dutsons' program. Participants operate their businesses in virtually the same manner under the Dutsons' program as they did before using the program. A major difference is that payments from third parties (such as the participant's employer) are no longer made to the participants personally; instead, they are made directly to participants' purported trusts, allegedly tax free.

16. This arrangement allows participants in the Dutsons' scheme to receive all of the income they received before entering the Dutson program, yet illegally hide their income from the IRS.

17. The Dutsons falsely or fraudulently inform participants that the Dutsons' serving as trustees or agents for the new entities helps avoid alter ego and nominee problems, which otherwise may arise with family members or friends serving as trustee.

18. The Dutsons advise customers to pay for certain personal assets and expenses directly from their purportedly nontaxable trust accounts.

19. The trusts and corporations that the Dutsons create for their customers are shams, devoid of economic substance, and should be disregarded for federal tax purposes.

20. Also as part of their abusive program, on occasion, after a participant transfers his property to a Dutson-created entity, the Dutsons file or arrange for the filing of phony liens against the property in order to forestall creditor collection efforts.

21. In nearly all instances, as soon as the participant purchases the Dutsons' program, the participant goes from being a fully law-abiding taxpayer to complete noncompliance, usually failing to report substantial income or failing to file all subsequent year tax returns, or evading payment of taxes due.

22. The Dutsons market their scheme through word of mouth, in seminars, and in individual meetings with potential customers.

23. In marketing their program, the Dutsons make numerous false or fraudulent statements regarding the so-called tax benefits associated with the program, including the following:

- Trusts, and not the individual participants, earn income and thus the individuals do not have to report the income on tax returns;
- The participant's employer can contract with the participant's shell corporation for the participant's services/labor, thereby relieving the participant of his obligation to report his compensation;
- Participants no longer have to file federal tax returns;
- Income that is filtered through the trusts is nontaxable to the customer;
- Trusts created by the Dutsons do not have to file tax returns, and do not

have to pay taxes on income earned;

- The participants' personal expenses could constitute deductible business expenses of the trusts or corporations;
- No taxes are owed because the participants work for a trust and are paid as trust managers, and the management fees are deductible business expenses to the trust; and
- There are no problems with the IRS through participation in the program.

24. The Dutsons fail to inform participants that the net income of the trusts is taxable, or that if the trusts are grantor trusts, which they almost always are, the income is taxable to the grantor (*i.e.*, the participant), or if the entity is a sham the income is taxable to the participant.

25. The Dutsons charge customers between \$4,000 and \$8,000 to purchase their program and participate in their scheme.

26. Micaela Dutson is a former practicing attorney. She resigned as a member of the Oregon State Bar in January 2002.

27. Tony Dutson represents himself to potential customers as a tax-law expert.

28. The Dutsons are former marketers or subpromoters of a similar tax scheme promoted by David Carroll Stephenson, a Washington-State-based abusive tax shelter promoter. Stephenson is subject to a permanent injunction entered July 30, 2004 (*United States v. Stephenson*, case no. 3:03cv5712-LKK, U.S. Dist. Ct., W.D. of Washington).

29. The Dutsons seemingly ended their formal affiliation with Stephenson several years ago and began promoting their own abusive program. Before moving to Arizona,

the Dutsons promoted their schemes to customers mainly in Washington and Oregon.

30. The Dutsons have continued to promote their program despite being notified that they are subject to a Code §§ 6700 and 7408 investigation. They have refused to cooperate in the investigation.

31. The IRS has identified over 100 persons who have purchased the Dutsons' illegal scheme.

32. The Dutsons' customers have been harmed by the Dutsons' abusive promotions because the customers have paid the Dutsons significant sums to establish worthless legal entities and give them erroneous tax advice that has led to the understatement of their income tax liabilities.

33. The United States is harmed because the Dutsons' customers are not paying their proper taxes to the United States Treasury. Moreover, given the IRS's limited resources, identifying and recovering all revenues lost from the Dutsons' abusive schemes may be impossible, resulting in a permanent loss to the United States Treasury.

34. The public is harmed because the IRS is forced to devote its limited resources to identifying and attempting to recover revenue lost as a result of the Dutsons' schemes, thereby reducing the level of service that the IRS can give to other taxpayers.

35. In addition to the harm caused by the Dutsons' advice and services, the Dutsons' activities undermine public confidence in the fairness of the federal tax system and incite noncompliance with the internal revenue laws.



**Count I**  
**Injunction under Code § 7408 for violations of Code §§ 6700 and 6701**

36. The United States incorporates by reference the allegations contained in paragraphs 1 through 35.

37. Code § 7408 authorizes a court to enjoin persons who have engaged in conduct subject to penalty under Code § 6700 or § 6701 from engaging in further such conduct.

38. Code § 6700 imposes a penalty on any person who organizes or sells a plan or arrangement and in so doing makes a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any tax benefit by participating in the plan or arrangement that the person knows or has reason to know is false or fraudulent as to any material matter.

39. Code § 6701 imposes a penalty on any person who aids in or advises with respect to the preparation of any portion of a tax return or other document that the person knows or has reason to believe will be used in connection with a material matter under the internal revenue laws, and that the person knows would, if used, result in an understatement of tax liability.

40. The Dutsons organize and sell an abusive tax scheme. In organizing and selling their abusive trust program, the Dutsons make statements regarding the tax benefits associated with participation in the program that they know or have reason to know are false or fraudulent as to material matters within the meaning of Code § 6700.

The Dutsons have thus engaged in conduct subject to penalty under Code § 6700.

41. The Dutsons aid or assist in, or advise with respect to, the preparation of tax returns or other documents, knowing (or having reason to believe) that such documents would be used in connection with a material matter arising under the internal revenue laws. The Dutsons know that the documents, if so used, will result in the understatement of the participant's tax liability. The Dutsons have thus engaged in conduct subject to penalty under Code § 6701.

42. Unless enjoined by this Court, the Dutsons are likely to continue to engage in this conduct and continue to organize and sell their abusive tax scheme. Injunctive relief is appropriate under Code § 7408.

**Count II**  
**Injunction under Code § 7402**

43. The United States incorporates by reference the allegations contained in paragraphs 1 through 42.

44. Code § 7402 authorizes courts to issue injunctions as may be necessary or appropriate for the enforcement of the internal revenue laws.

45. The Dutsons, through the actions described above, have engaged in conduct that interferes substantially with the administration and enforcement of the internal revenue laws.

46. Unless the Dutsons are enjoined, the IRS will have to devote substantial time and resources to identify and locate their customers, and then construct and examine those

persons' tax returns and liabilities. The burden of pursuing individual customers may be an insurmountable obstacle, given the IRS's limited resources.

47. If the Dutsons are not enjoined, they likely will continue to engage in conduct that obstructs and interferes with the enforcement of the internal revenue laws. The United States is entitled to injunctive relief under Code § 7402(a) to prevent such conduct.

### **Relief Sought**

WHEREFORE, the United States prays for the following relief:

A. That the Court find that the defendants have engaged in conduct subject to penalty under Code §§ 6700 and 6701, and that injunctive relief is appropriate under Code § 7408 to prevent the defendants, and any business or entity through which they operate, and anyone acting in concert with them from engaging in further such conduct;

B. That the Court find that the defendants have engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief against the defendants, and any business or entity through which they operate, and anyone acting in concert with them, is appropriate to prevent the recurrence of that conduct pursuant to the Court's powers under Code § 7402(a);

C. That the Court, pursuant to Code §§ 7402 and 7408, enter a permanent injunction prohibiting the defendants and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them, from

directly or indirectly:

- (1) Organizing, promoting, marketing, or selling any tax shelter, plan or arrangement, including their trust program, that assists, advises, or encourages customers to attempt to violate the internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities;
- (2) Making false statements about the allowability of any deduction or credit, the excludability of any income, or the securing of any tax benefit by reason of participating in such tax shelters, plans or arrangements;
- (3) Encouraging, instructing, advising or assisting others to violate the tax laws, including to evade the payment of taxes;
- (4) Engaging in conduct subject to penalty under Code § 6700, *i.e.*, by making or furnishing, in connection with the organization or sale of a shelter, plan, or arrangement, a statement the defendants know or have reason to know to be false or fraudulent as to any material matter under the federal tax laws;
- (5) Engaging in conduct subject to penalty under Code § 6701, *i.e.*, preparing or assisting others in preparing any tax forms or other documents to be used in connection with any material matter arising under the internal revenue laws and which the defendants know will (if so used) result in the understatement of tax liability;
- (6) Engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws.

D. That the Court, pursuant to Code § 7402, enter an injunction requiring defendants to produce to the United States a list identifying (with names, mailing and e-mail addresses, phone numbers and social security and any other tax-identification numbers) all persons who have purchased their tax plans, arrangements, or programs, and to file with the Court, within 20 days of the date the permanent injunction is entered, a certification that they have done so;

E. That the Court, pursuant to Code § 7402, enter an injunction requiring defendants to contact by mail (or by e-mail, if an address is unknown) all individuals who have previously purchased their tax shelters, plans, arrangements, or programs, including the trust program, or any other tax shelter, plan or program in which defendants have been involved either individually or through any business entity, and inform those individuals of the Court's findings concerning the falsity of the defendants' prior representations and attach a copy of the permanent injunction against the defendants, and to file with the Court, within 20 days of the date the permanent injunction is entered, a certification that they have done so;

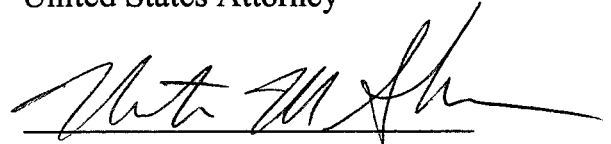
F. That the Court order that the United States may engage in post-judgment discovery to ensure compliance with the injunction;

G. That the Court retain jurisdiction over this action for purposes of implementing and enforcing the final judgment; and

H. For such other and further relief as the Court may deem proper and just.

Dated this 15th day of November, 2004.

PAUL CHARLTON  
United States Attorney

A handwritten signature in black ink, appearing to read 'Martin M. Shoemaker', written over a horizontal line.

MARTIN M. SHOEMAKER

Ga. Bar # 001340

Trial Attorney, Tax Division

U.S. Department of Justice

P.O. Box 7238

Washington, D.C. 20044

(202) 514-6491 phone

(202) 514-6770 fax